

## IN THE SUPREME COURT OF THE HAWAIIAN ISLANDS.

DECEMBER TERM, 1896.

G. K. KAILOPAHIA v. KUNA.

EXCEPTIONS FROM CIRCUIT COURT, FIRST CIRCUIT.

SUBMITTED JANUARY 7, 1897.

DECIDED JANUARY 20, 1897.

JUDD, C.J., FREAR AND WHITING, JJ.

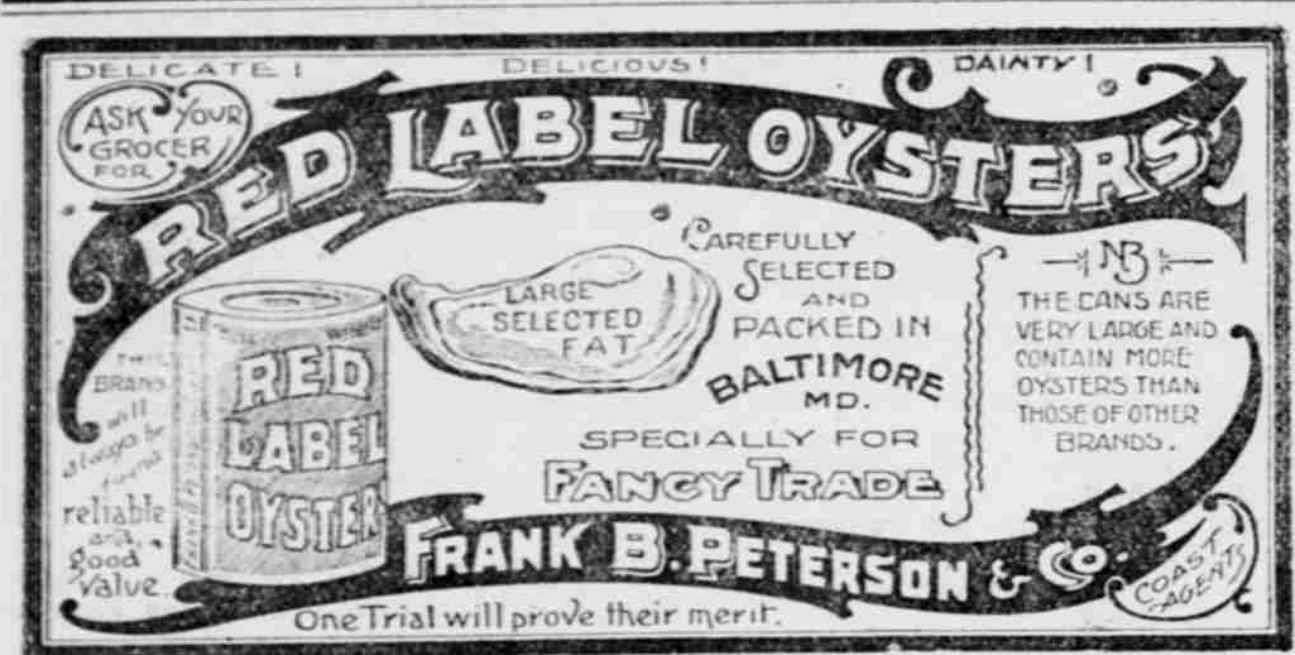
There being evidence on both sides of the question as to the time when exclusive possession of land by the defendant's grantor began, she being a tenant in common with plaintiff's ancestor, the judgment of the trial court, jury waived, cannot be disturbed.

OPINION OF THE COURT BY JUDD, C.J.

This case comes to us on exceptions to the refusal of the trial court to set aside its judgment and grant a new trial on the ground that the judgment or findings of fact were contrary to the evidence and the weight of evidence. The case is ejection by one G. K. Kaiopahia against Kuna, a tenant of one Lilikalani, for a parcel of land situated in Kaulawela, Honolulu, awarded to Pouhiwa by Land Commission Award No. 2145, Royal Patent No. 1232, being apana 1 of said patent. The land consists of 14 kalo patches, and is 1½ acres in extent. The land came to M. Kekuanaoa. It is not essential to ascertain how, as Kekuanaoa conveyed it on the 6th August, 1867, to Kaiopahia, the plaintiff's father, and Napapa (w), under whom defendant claims, in exchange for a piece of land situated in Waiawa, Ewa, conveyed to him by the other parties by deed of the same date. The said Napapa conveyed the whole land to her daughter, Nahua, by deed dated the 21st December, 1869. Nahua died in 1893, leaving her daughter Lilikalani as sole heir. The defendant Kuna, is her lessee. The plaintiff, G. K. Kaiopahia, claims an undivided half of the land as heir to his father, one of the grantees of the said M. Kekuanaoa. The defendant claims the entire land by adverse possession for a period of over twenty years, and contends that entry and continued possession under the deed of Napapa to Nahua of the whole land constituted an ouster of the co-tenant, Kaiopahia. Defendant's counsel contended in argument that the deed itself being put on record was an ouster. The law is otherwise. A conveyance by one tenant in common of the whole estate must be followed by entry and possession under it to constitute an ouster. See *Nakuaimanu v. Halstead & Gordon*, 4 Haw. 42, and cases cited. The turning point of the case is the time of the alleged ouster, i. e., when Nahua took possession. Witnesses for plaintiff assert, and it is not denied by defendant's witnesses, that one Nika, a connection of the plaintiff, cultivated the land for plaintiff's father and Napapa, but when Maihooluhi, Nika's wife, died, Nika left the land and Nahua took possession and afterwards leased it to Chinese tenants. The testimony is that Maihooluhi died shortly before a great epidemic of small-pox in the reign of Kalakaua. There were two visitations of small-pox since the great one of 1853, one in 1872 and one in 1881, which became epidemic. Kalakaua's reign began in 1874. Witnesses for defendant say positively that Nahua took possession in 1871 or 1872, but all say that when she took possession her daughter, Lilikalani, was a small child from four to six years old. She is now twenty-two years old. She was therefore born in 1874, and if she was, say four years old, when her mother took possession, that would fix the date of the entry and ouster as being in the year 1880, and the statute of limitations would not have run up to the date of this suit. The trial court followed this course of reasoning, holding that the small-pox epidemic of 1881 must have been that referred to, and consequently gave judgment for the plaintiff for one undivided half of the land.

The evidence fully justifies this conclusion, and we cannot, in view of the conflict of testimony, disturb this finding.

The exceptions are overruled.  
*Magoon & Edings*, for plaintiff.  
*C. Brown*, for defendant.



## STRANGE VOICES IN OCEAN.

## Sprites of the Air Watch Over the Spray.

"We have already made several references in our columns to Captain Joshua Slocum and his solitary voyage around the world in his 13-tonner *Spray*," says the *Yachtsman* of London Dec. 17, "yet we cannot forbear another and lengthy one, moved thereto by the account of his sensations and experiences, which have been made public by the *New Zealand Herald*, from which we cull the following interesting paragraphs:

At first it was a novelty—my boat and I working our way across the ocean. This idea lasted for a number of days, then gradually it faded away, and I drifted on slowly, ever so slowly, into loneliness. That feeling crept steadily into my being and took possession of me. I was alone, utterly alone—a single insect clinging to a single straw in the midst of the elements—and I began to live solely in those feelings which Bayard Taylor says come only to sailors, authors, artists—to men who live with nature.

The face of a man long dead rose up before me; my memory, never more than fairly strong, now worked with a power which shocked me. The ominous, the insignificant, the great, the small, the wonderful, the common—

place, it brought before my mental vision in magical succession. It showed me pages of my history which I had so long forgotten that now, when I saw them again, they seemed to almost belong to a previous existence. . . . I saw the face of a child who slept without breathing. Yet the remembrance of seeing that child had not occurred to me for thirty years.

I heard all the voices of the past, laughing, crying, telling what I heard them tell in any of the many corners of the earth. I played again with schoolmates who had gone out of my life with the closing of my school days.

Songs came back which had not been sung since my fishing trips. I heard a fiddler playing a tune which I had not heard since boyhood. All these buried memories, rushing from their graves upon me, set me pondering, pondering on their mystery. What is a man's mind, which unconsciously registers every impression so wondrously?

One night, while soundly sleeping, I was summoned by a voice—the voice of a strong man—hailing alongside, "Spray, ahoy!" I sprang up. Who was it knew my boat, to hail her in mid-ocean? There was no one. But a white arch was upon the horizon; a regular screecher was tearing up from the southwest. I took in sail, not a moment before the severest gale of my trip struck me.

It is easy enough to say these things are mere coincidences; but may they not be something else?

## The Ins and Outs of It.

If you get best wear out of a coat, best work must have gone into it. You can't get good bread out of poor flour.

Moral: You can't get the best out of anything, unless the best is in it; and the best has to be put in before it can be taken out. Now, we have a rule to test those sarsaparillas with a big "best" on the bottle. "Tell us what's put in you and we'll decide for ourselves about the best." That's fair. But these modest sarsaparillas say: "Oh! we can't tell. It's a secret. Have faith in the label." . . . Stop! There's one exception; one sarsaparilla that has no secret to hide. It's Ayer's. If you want to know what goes into Ayer's Sarsaparilla, ask your doctor to write for the formula. Then you can satisfy yourself that you get the best of the sarsaparilla argument when you get Ayer's.

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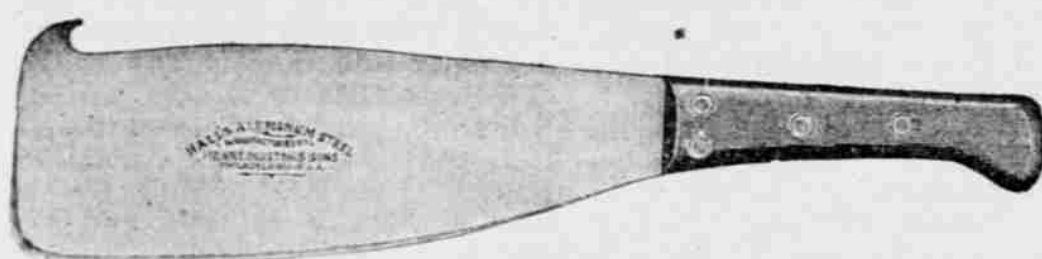
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